IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3068 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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JAGDISH PETHALJI CHAVDA - Petitioner
Versus
STATE OF GUJARAT & 1 - Respondents

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Appearance :
MR AJ PATEL for Petitioner(s) : 1,
MR KT DAVE, AGP for Respondents.

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 31/07/2006
ORAL JUDGMENT

1. The petitioner has filed this petition under Article 226 of the Constitution of India praying for quashing and setting aside the communication dated 07.11.1996 and the order dated 30.09.1985 produced at Annexure E & F to the petition.

2. It is the case of the petitioner that the petitioner owns and possesses a property bearing sub-plot No. 289/B of F.P. No. 608 and 809 of TPS No. 21, admeasuring about 636.90 sq. mtrs. It is situated in Manekbag Society in Ambawadi area of the city of Ahmedabad. The said property is a residential bungalow which was constructed on the said plot of land long back in 1965. The Estate and City Improvement Officer of Ahmedabad Municipal Corporation had issued a commencement certificate / development permission on 23.06.1965 in respect of the said construction.

3. It is also the case of the petitioner that the said property originally belonged to one Mr. Rajnikant Shantilal Shanghavi who had sold the same to the present petitioner by a registered sale deed. On the basis of the said sale deed, the petitioner was accepted as a member of the Manekbag Co. Op. Housing Society Ltd., and the name of the petitioner was enrolled as a member of the said society in the record of the society. The petitioner wanted to make certain additions in the said residential bungalow and applied to AMC for granting revised development permission in respect of the said property and after examining pros and cons, the Assistant Town Development Officer of the AMC issued commencement certificate / development permission on 28.08.1991 subject to the terms and conditions set out in the said revised commencement certificate.

4. It is also the case of the petitioner that

the petitioner had, thereafter carried out the work of making additions and alterations in the said bungalow in accordance with the revised commencement certificate issued by AMC. The respondent No. 2 i.e. Deputy Collector however by his communication dated 02.06.1995 called upon the petitioner to furnish certain details as the same are required in the proceedings under Section 66 of the Bombay Land Revenue Code which were pending before him. The petitioner submitted his written explanation to the respondent No. 2 and furnished the details required by him vide letter dated 16.06.1995. The petitioner inter alia pointed out in the said written explanation that the construction of the bungalow was put up long back in accordance with the development permission granted by the Ahmedabad Municipal Corporation, that the petitioner has carried out certain additions and alteration in the property which already existed and that too after obtaining revised development permission from AMC and no

unauthorised construction was made on the property and, therefore, the chapter was required to be closed.

5. Despite the aforesaid facts and explanations submitted by the petitioner, the respondent No. 2 by his order dated 07.11.1996 rejected the request of the petitioner to reconsider the matter on the ground that order dated 30.09.1985 directing removal of construction put up on the said plot of land and imposing penalty as indicated in the said order. The petitioner, therefore, having aggrieved by the said communication dated 07.11.1996 and order dated 30.09.1985 has filed the present petition.

6. Mr. A.J. Patel, learned advocate appearing for the petitioner has submitted that the order passed by the respondent No. 2 is contrary to the law laid down by this Court that once permission under Section 26 or 27

or 29 is granted by the competent authority, no permission under any other law is required to be obtained. He has further submitted that action on the part of respondent No. 2 in insisting for N.A. permission is arbitrary, discriminatory and violative of petitioner's fundamental right guaranteed under Article 14 of the Constitution of India. The authorities below committed an error in not properly appreciating that in view of the provisions of Section 117 of the Gujarat Town Planning and Urban Development Act and the interpretation put on the said section by these judgments, no N.A. permission is required to be obtained in the present case as the petitioner had put up the construction in accordance with the permission granted by AMC in 1965 and revised permission in the year 1991. Mr. Patel has further submitted that the action on the part of the respondent No. 2 in initiating proceedings U/s. 66 of the Bombay Land Revenue Code after a period of about 32 years from the date of issuance

of first commencement certificate and after lapse of 6 years from the date of revised commencement certificate by AMC is arbitrary, discriminatory and violative of petitioner's fundamental rights guaranteed under Art. 14 of the Constitution of India.

7. Mr. Patel has relied on the decision of this Court in the case of **Karimbhai Kalubhai Belim and Others V/s. State of Gujarat and Another, 1996 (1) G.L.H. 200** wherein it is held that by virtue of Section 117 of the Act, the petitioners were not required to obtain any other permission under any other law after having obtained the development permission under S. 29 thereof.

8. He has further drawn the attention of the Court to the judgment of the Division Bench of this Court in Letters Patent Appeal No. 205 of 1999 dated 17.12.2003 wherein this Court has held that by Section 117 of the

Act, it was provided that, notwithstanding anything contained in any other law for the time being in force, when permission for development in respect of any land has been obtained under this Act, such development shall not be deemed to have unlawfully undertaken or carried out by reason only of the fact that permission, approval or sanction required under such other law for such development has not been obtained. The said provision which was contained in Clause (a) of Section 117 has been deleted by Act No. 2 of 1999. However, the permission for construction of these shops which was granted by the Area Development Authority on 20.11.89 during currency of the said provision, was sufficient and the construction made pursuant to that permission cannot be ordered to be demolished on the ground that permission of the Collector was not obtained under Section 65 of the Bombay Land Revenue Code. The Division Bench has also referred to the decision of this Court in the case of

Karimbhai Kalubhai (Supra) and held that no permission under any other law including that under Section 65 of the Bombay Land Revenue Code would be necessary if development permission was obtained under Section 29 of the Act with respect to the lands in question.

9. Mr. Patel has, therefore, submitted that the petitioner's case is squarely covered by the Division Bench Judgment of this Court. He has, therefore, submitted that the impugned orders are required to be quashed and set aside and the petition be allowed.

10. Mr. K.T. Dave, learned Assistant Government Pleader appearing for the State has submitted that the impugned order is of 1985 and the petition is filed in the year 1997. Since the petition is filed after more than 12 years, the Court should not exercise its extra ordinary writ jurisdiction under Article 226

of the Constitution of India. He has further submitted that the commencement certificate was issued by AMC incorporating certain conditions therein and one of such conditions was that as per the provisions contained in Section 65 of the Bombay Land Revenue Code, before the land is put for non-agricultural use, the Collector's permission is required to be obtained. This condition is violated and hence, the order passed by the respondent No. 2 on 30.09.1985 and the communication sent on 07.11.1996 based on the said order should not be disturbed.

11. After having heard learned advocate appearing for the petitioner and learned Assistant Government Pleader appearing for State and after having gone through the averments made in the petition as well as the authorities relied upon by Mr. Patel in support of the contentions raised before this Court, the Court is of the view that initially commencement certificate was issued

in the year 1965. Thereafter for the purpose of carrying out modifications and/or alterations, the revised commencement certificate was obtained and accordingly, the construction was made. The respondent No. 2 has issued notice on 02.06.1995 which is after more than 32 years from the date of initial certificate. Since the necessary permission was already obtained, there is no need to obtain N.A. permission under Section 65 of the Bombay Land Revenue Code as decided by this Court. The construction was prior to the deletion of Section 117 (A) of the Act. The present case is squarely covered by the ratio laid down by the Division Bench of this Court, in the case of Collector V/s. Triveni Park Co-Op. Housing Society Ltd. (Supra).

12. In the above view of the matter, the impugned order dated 30.09.1985 and the communication dated 07.11.1196 are required to be quashed and set aside and they are accordingly quashed and set aside. The

petition is allowed. Rule is made absolute without any order as to costs.

[K.A. PUJ, J.]

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